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SOURCE: 37 FR 3278, Feb. 12, 1972, unless otherwise noted.

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Subpart A—General

§ 76.1 Purpose.

The rules and regulations set forth in this part provide for the certification of cable television systems and for their operation in conformity with standards for carriage of television broadcast signals, program exclusivity, cablecasting, access channels, and related matters. The rules and regulations in this part also describe broadcast carriage requirements for cable operators and satellite carriers.

[37 FR 3278, Feb. 12, 1972, as amended at 70 FR 21670, Apr. 27, 2005]

§ 76.3 Other pertinent rules.

Other pertinent provisions of the Commission's rules and regulations relating to Multichannel Video and the Cable Television Service are included in the following parts of this chapter:

Part 1—Practice and Procedure.
Part 11—Emergency Alert System (EAS).
Part 21—Domestic Public Radio Services (Other Than Maritime Mobile).
Part 63—Extension of Lines and Discontinuance of Service by Carriers.
Part 64—Miscellaneous Rules Relating to Common Carriers.
Part 78—Cable Television Relay Service.
Part 79—Closed Captioning of Video Programming.
Part 91—Industrial Radio Services.

[65 FR 53614, Sept. 5, 2000]

§ 76.5 Definitions.

(a) *Cable system or cable television system.* A facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(1) A facility that services only to retransmit the television signals of one or more television broadcast stations;

(2) A facility that serves subscribers without using any public right-of-way;

(3) A facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, as amended, except that such facility shall be considered a cable system to the extent

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such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(4) An open video system that complies with Section 653 of the Communications Act; or

(5) Any facilities of any electric utility used solely for operating its electric utility systems.

NOTE TO PARAGRAPH (a): The provisions of Subparts D and F of this part shall also apply to all facilities defined previously as cable systems on or before April 28, 1985, except those that serve subscribers without using any public right-of-way.

(b) *Television station; television broadcast station.* Any television broadcast station operating on a channel regularly assigned to its community by § 73.606 or § 73.622 of this chapter, and any television broadcast station licensed by a foreign government: *Provided, however,* That a television broadcast station licensed by a foreign government shall not be entitled to assert a claim to carriage, program exclusivity, or retransmission consent authorization pursuant to subpart D or F of this part, but may otherwise be carried if consistent with the rules on any service tier. Further provided that a television broadcast station operating on channels regularly assigned to its community by both §§ 73.606 and 73.622 of this chapter may assert a claim for carriage pursuant to subpart D of this part only for a channel assigned pursuant to § 73.606.

(c) *Television translator station.* A television broadcast translator station as defined in § 74.701 of this chapter.

(d) *Grade A and Grade B contours.* The field intensity contours defined in § 73.683(a) of this chapter.

(e) *Specified zone of a television broadcast station.* The area extending 56.3 air km (35 air miles) from the reference point in the community to which that station is licensed or authorized by the Commission. A list of reference points is contained in § 76.53. A television broadcast station that is authorized but not operating has a specified zone that terminates eighteen (18) months after the initial grant of its construction permit.

(f) *Major television market.* The specified zone of a commercial television station licensed to a community listed in § 76.51, or a combination of such specified zones where more than one community is listed.

(g) *Designated community in a major television market.* A community listed in § 76.51.

(h) *Smaller television market.* The specified zone of a commercial television station licensed to a community that is not listed in § 76.51.

(i) *Significantly viewed.* Viewed in over-the-air households as follows: (1) For a full or partial network station—a share of viewing hours of at least 3 percent (total week hours), and a net weekly circulation of at least 25 percent; and (2) for an independent station—a share of viewing hours of at least 2 percent (total week hours), and a net weekly circulation of at least 5 percent. See § 76.54.

NOTE: As used in this paragraph, “share of viewing hours” means the total hours that over-the-air television households viewed the subject station during the week, expressed as a percentage of the total hours these households viewed all stations during the period, and “net weekly circulation” means the number of over-the-air television households that viewed the station for 5 minutes or more during the entire week, expressed as a percentage of the total over-the-air television households in the survey area.

(j) *Full network station.* A commercial television broadcast station that generally carries in weekly prime time hours 85 percent of the hours of programming offered by one of the three major national television networks with which it has a primary affiliation (*i.e.*, right of first refusal or first call).

(k) *Partial network station.* A commercial television broadcast station that generally carries in prime time more than 10 hours of programming per week offered by the three major national television networks, but less than the amount specified in paragraph (j) of this section.

(l) *Independent station.* A commercial television broadcast station that generally carries in prime time not more than 10 hours of programming per week offered by the three major national television networks.

(m) A network program is any program delivered simultaneously to more

than one broadcast station regional or national, commercial or noncommercial.

(n) *Prime time.* The 5-hour period from 6 to 11 p.m., local time, except that in the central time zone the relevant period shall be between the hours of 5 and 10 p.m., and in the mountain time zone each station shall elect whether the period shall be 6 to 11 p.m. or 5 to 10 p.m.

NOTE: Unless the Commission is notified to the contrary, a station in the mountain time zone shall be presumed to have elected the 6 to 11 p.m. period.

(o) *Cablecasting.* Programming (exclusive of broadcast signals) carried on a cable television system. See paragraphs (y), (z) and (aa) (Classes II, III, and IV cable television channels) of this section.

(p) *Origination cablecasting.* Programming (exclusive of broadcast signals) carried on a cable television system over one or more channels and subject to the exclusive control of the cable operator.

(q) *Legally qualified candidate.* (1) Any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(iii) Has met the qualifications set forth in either paragraphs (q)(2), (3) or (4) of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (q)(1) of this section, that person:

(i) Has qualified for a place on the ballot, or

(ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a

bona fide candidate for nomination or office.

Persons seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraphs (q) (1) and (2) of this rule; except that any such person who has met the requirements set forth in paragraphs (q) (1) and (2) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territories and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (q)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination; except that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition meeting the requirements set forth in paragraph (q)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary of Presidential preference ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory of the District of Columbia; except that such person meeting the requirements set forth in paragraph (q) (1) and (4) in

at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of the Act.

(5) The term “substantial showing” of bona fide candidacy as used in paragraph (q) (2), (3) and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(r) *Class I cable television channel.* A signaling path provided by a cable television system to relay to subscriber terminals television broadcast programs that are received off-the-air or are obtained by microwave or by direct connection to a television broadcast station.

(s) *Class II cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals television signals that are intended for reception by a television broadcast receiver without the use of an auxiliary decoding device and which signals are not involved in a broadcast transmission path.

(t) *Class III cable television channel.* A signaling path provided by a cable television system to deliver to subscriber terminals signals that are intended for reception by equipment other than a television broadcast receiver or by a television broadcast receiver only when used with auxiliary decoding equipment.

(u) *Class IV cable television channel.* A signaling path provided by a cable television system to transmit signals of any type from a subscriber terminal to another point in the cable television system.

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

(w) *System noise.* That combination of undesired and fluctuating disturbances within a cable television channel that degrades the transmission of the desired signal and that is due to modulation processes or thermal or other noise-producing effects, but does not include hum and other undesired signals of discrete frequency. System noise is specified in terms of its rms voltage or its mean power level as measured in the 4 MHz bandwidth between 1.25 and 5.25 MHz above the lower channel boundary of a cable television channel.

(x) *Terminal isolation.* The attenuation, at any subscriber terminal, between that terminal and any other subscriber terminal in the cable television system.

(y) *Visual signal level.* The rms voltage produced by the visual signal during the transmission of synchronizing pulses.

(z) *Affiliate.* When used in relation to any person, another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.

(aa) *Person.* An individual, partnership, association, joint stock company, trust, corporation, or governmental entity.

(bb) *Significant interest.* A cognizable interest for attributing interests in broadcast, cable, and newspaper properties pursuant to §§ 73.3555, 73.3615, and 76.501.

(cc) *Cable system operator.* Any person or group of persons (1) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system; or (2) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system.

(dd) *System community unit: Community unit.* A cable television system, or

portion of a cable television system, that operates or will operate within a separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas).

(ee) *Subscribers*. (1) *As used in the context of cable service*, subscriber or cable subscriber means a member of the general public who receives broadcast programming distributed by a cable television system and does not further distribute it.

(2) *As used in the context of satellite service*, subscriber or satellite subscriber means a person who receives a secondary transmission service from a satellite carrier and pays a fee for the service, directly or indirectly, to the satellite carrier or to a distributor.

(ff) *Cable service*. The one-way transmission to subscribers of video programming, or other programming service; and, subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service. For the purposes of this definition, “video programming” is programming provided by, or generally considered comparable to programming provided by, a television broadcast station; and, “other programming service” is information that a cable operator makes available to all subscribers generally.

(gg) *Satellite community*. A separate and distinct community or municipal entity (including unincorporated communities within unincorporated areas and including single, discrete unincorporated areas). The boundaries of any such unincorporated community may be defined by one or more adjacent five-digit zip code areas. Satellite communities apply only in areas in which there is no pre-existing cable community, as defined in 76.5(dd).

(hh) *Input selector switch*. Any device that enables a viewer to select between cable service and off-the-air television signals. Such a device may be more sophisticated than a mere two-sided switch, may utilize other cable interface equipment, and may be built into consumer television receivers.

(ii) A *syndicated program* is any program sold, licensed, distributed or offered to television station licensees in

more than one market within the United States other than as network programming as defined in § 76.5(m).

(jj) *Rural area*. A community unit with a density of less than 19 households per route kilometer or thirty households per route mile of coaxial and/or fiber optic cable trunk and feeder line.

(kk) *Technically integrated*. Having 75% or more of the video channels received from a common headend.

(ll) *Cable home wiring*. The internal wiring contained within the premises of a subscriber which begins at the demarcation point. Cable home wiring includes passive splitters on the subscriber's side of the demarcation point, but does not include any active elements such as amplifiers, converter or decoder boxes, or remote control units.

(mm) *Demarcation point*. (1) For new and existing single unit installations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's premises.

(2) For new and existing multiple dwelling unit installations with non-loop-through wiring configurations, the demarcation point shall be a point at (or about) twelve inches outside of where the cable wire enters the subscriber's dwelling unit, or, where the wire is physically inaccessible at such point, the closest practicable point thereto that does not require access to the individual subscriber's dwelling unit.

(3) For new and existing multiple dwelling unit installations with loop-through wiring configurations, the demarcation points shall be at (or about) twelve inches outside of where the cable wire enters or exits the first and last individual dwelling units on the loop, or, where the wire is physically inaccessible at such point(s), the closest practicable point thereto that does not require access to an individual subscriber's dwelling unit.

(4) As used in this paragraph (mm)(3), the term “physically inaccessible” describes a location that:

(i) Would require significant modification of, or significant damage to, preexisting structural elements, and

(ii) Would add significantly to the physical difficulty and/or cost of accessing the subscriber's home wiring.

NOTE TO § 76.5 PARAGRAPH (mm)(4): For example, wiring embedded in brick, metal conduit, cinder blocks, or sheet rock with limited or without access openings would likely be physically inaccessible; wiring enclosed within hallway molding would not.

(nn) *Activated channels.* Those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational or governmental use.

(oo) *Usable activated channels.* Those activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations. See part 76, subpart K.

(pp) *Principal headend.* (1) The headend, in the case of a cable system with a single headend or,

(2) In the case of a cable system with more than one headend, the principal headend designated by the cable operator, except that such designation shall not undermine or evade the requirements of subpart D of this part. The designation of a principal headend shall be made by May 3, 1993, and each cable system shall place in its public file the location of its designated principal headend by June 17, 1993, as provided in § 76.1708. Except for good cause, an operator may not change its choice of principal headend.

(qq) *Emergency Alert System (EAS).* The EAS is composed of broadcast networks; cable networks and program suppliers; AM, FM and TV broadcast stations; Low Power TV (LPTV) stations; cable systems and wireless cable systems; and other entities and industries operating on an organized basis during emergencies at the National, State, or local levels.

[37 FR 3278, Feb. 12, 1972]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 76.5, see the List of CFR Sections Affected which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 76.6 General pleading requirements.

(a) *General pleading requirements.* All written submissions, both substantive and procedural, must conform to the following standards:

(1) A pleading must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy, should be pleaded fully and with specificity.

(2) Pleadings must contain facts which, if true, are sufficient to warrant a grant of the relief requested.

(3) Facts must be supported by relevant documentation or affidavit.

(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority. Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(b) *Copies to be Filed.* Unless otherwise directed by specific regulation or the Commission, an original and two (2) copies of all pleadings shall be filed in accordance with § 0.401(a) of this chapter, except that petitions requiring fees as set forth at part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) *Frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

[64 FR 6569, Feb. 10, 1999]

§ 76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) *Initiating pleadings.* In addition to the general pleading requirements, initiating pleadings must adhere to the following requirements:

(1) *Petitions.* On petition by any interested party, cable television system operator, a multichannel video programming distributor, local franchising authority, or an applicant, permittee, or licensee of a television broadcast or translator station, the Commission may waive any provision of this part 76, impose additional or different requirements, issue a ruling on a complaint or disputed question, issue a show cause order, revoke the certification of the local franchising authority, or initiate a forfeiture proceeding. Petitions may be submitted informally by letter.

(2) *Complaints.* Complaints shall conform to the relevant rule section under which the complaint is being filed.

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

(4) *Statement of relief requested.* (i) The petition or complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant

of such relief would serve the public interest.

(ii) The petition or complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(iii) A petition or complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A request for the return of an initiating document will be regarded as a request for dismissal.

(5) *Failure to prosecute.* Failure to prosecute petition or complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Responsive pleadings.* In addition to the general pleading requirements, responsive pleadings must adhere to the following requirements:

(1) *Comments/oppositions to petitions.* Unless otherwise directed by the Commission, interested persons may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(2) *Answers to complaints.* (i) Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following, and the relevant rule section under which the complaint is being filed.

(ii) The answer shall be filed within 20 days of service of the complaint, unless another period is set forth in the relevant rule section.

(iii) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues

shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(iv) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(v) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, reply comments and replies must adhere to the following requirements:

(1) The petitioner or complainant may file a reply to a responsive pleading which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission or the relevant rule section, comments and replies to answers must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(f) *Discovery.* (1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a

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memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff may hold a status conference with the parties, pursuant to § 76.8 of this part, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff may advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge.*

(1) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *System community units outside the Contiguous States.* On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

(i) *Commission ruling.* The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on

the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO § 76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§ 1.91–1.95 of this chapter shall apply.

NOTE 2 TO § 76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to § 1.80(g) of this chapter will not be initiated by such motion until the affected parties are given an opportunity to respond to the Commission's charges.

NOTE 3 TO § 76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of § 1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of § 1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO § 76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002]

EFFECTIVE DATE NOTE: At 76 FR 60673, Sept. 29, 2011, § 76.7 was amended by revising paragraph (g)(2), effective October 31, 2011. This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget. For the convenience of the user, the revised text is set forth as follows:

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* * * * *

(g) * * *

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission and the Chief Administrative Law Judge.

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§ 76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written me-

morialization unless otherwise directed by the staff.

[64 FR 6571, Feb. 10, 1999]

§ 76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the proceeding and any support personnel employed by such attorneys;

(ii) Officers or employees of the parties in the proceeding who are named by another party as being directly involved in the proceeding;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

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(v) Court reporters and stenographers in accordance with the terms and conditions of this section.

(d) The Commission will entertain, subject to a proper showing, a party's request to further restrict access to proprietary information as specified by the party. The other parties will have an opportunity to respond to such requests.

(e) The persons designated in paragraphs (c) and (d) of this section shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense of the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(f) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraphs (c) and (d) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(g) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed.

[64 FR 6571, Feb. 10, 1999]

§ 76.10 Review.

(a) *Interlocutory review.* (1) Except as provided below, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

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(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(b) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(c) *Application for review.* (1) Any party to a part 76 proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a part 76 proceeding aggrieved by any decision on the merits by an administrative law judge may file an appeal of the decision directly with the Commission, in accordance with §§ 1.276(a) and 1.277(a) through (c) of this chapter, except that in proceedings brought pursuant to §§ 76.1003, 76.1302, and 76.1513 of this part, unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal.

[64 FR 6571, Feb. 10, 1999]

§ 76.11 Lockbox enforcement.

Any party aggrieved by the failure or refusal of a cable operator to provide a lockbox as provided for in Title VI of the Communications Act may petition

the Commission for relief in accordance with the provisions and procedures set forth in § 76.7 for petitions for special relief.

[50 FR 18661, May 2, 1985]

Subpart B—Registration Statements

§ 76.29 Special temporary authority.

(a) In circumstances requiring the temporary use of community units for operations not authorized by the Commission's rules, a cable television system may request special temporary authority to operate. The Commission may grant special temporary authority, upon a finding that the public interest would be served thereby, for a period not to exceed ninety (90) days, and may extend such authority, upon a like finding, for one additional period, not to exceed ninety (90) days.

(b) Requests for special temporary authority may be submitted informally, by letter, and shall contain the following:

- (1) Name and address of the applicant cable system.
- (2) Community in which the community unit is located.
- (3) Type of operation to be conducted.
- (4) Date of commencement of proposed operations.
- (5) Duration of time for which temporary authority is required.
- (6) All pertinent facts and considerations relied on to demonstrate the need for special temporary authority and to support a determination that a grant of such authority would serve the public interest.
- (7) A certificate of service on all interested parties.

(c) A request for special temporary authority shall be filed at least ten (10) days prior to the date of commencement of the proposed operations, or shall be accompanied by a statement of reasons for the delay in submitting such request.

(d) A grant of special temporary authority may be rescinded by the Commission at any time upon a finding of facts which warrant such action.

[39 FR 35166, Sept. 30, 1974; 42 FR 19346, Apr. 13, 1977, as amended at 43 FR 49008, Oct. 20, 1978]

Subpart C—Cable Franchise Applications

§ 76.41 Franchise application process.

(a) Definition. *Competitive franchise applicant*. For the purpose of this section, an applicant for a cable franchise in an area currently served by another cable operator or cable operators in accordance with 47 U.S.C. 541(a)(1).

(b) A competitive franchise applicant must include the following information in writing in its franchise application, in addition to any information required by applicable State and local laws:

- (1) The applicant's name;
- (2) The names of the applicant's officers and directors;
- (3) The business address of the applicant;
- (4) The name and contact information of a designated contact for the applicant;
- (5) A description of the geographic area that the applicant proposes to serve;
- (6) The PEG channel capacity and capital support proposed by the applicant;
- (7) The term of the agreement proposed by the applicant;
- (8) Whether the applicant holds an existing authorization to access the public rights-of-way in the subject franchise service area as described under paragraph (b)(5) of this section;
- (9) The amount of the franchise fee the applicant offers to pay; and
- (10) Any additional information required by applicable State or local laws.

(c) A franchising authority may not require a competitive franchise applicant to negotiate or engage in any regulatory or administrative processes prior to the filing of the application.

(d) When a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in